

EXHIBIT 8-C
SAMPLE FUNDING ASSISTANCE AGREEMENT

(For Assistance to a Nonprofit Organization)
(This is NOT a Subrecipient Agreement)

This Assistance Agreement is made and entered into this ____ day of _____, 20____, by and between (Name of Nonprofit Entity), a nonprofit organization, hereinafter referred to as (Nonprofit Entity), and (County / City or Town of), hereinafter referred to as the "County"/ "City" / "Town".

RECITALS

WHEREAS the County/City/Town has been awarded a grant by the Montana Department of Commerce (MDOC) under the Community Development Block Grant – Economic Development (CDBG-ED) Program; and

WHEREAS the purpose of this grant is to increase employment opportunities for low and moderate-income persons residing within the County's/City's/Town's jurisdictional area; and

WHEREAS the (Nonprofit Entity) wishes to receive CDBG-ED funds from the County / City / Town to establish a business enterprise within the County's / City's / Town's jurisdictional area; and

WHEREAS, in consideration for the proposed assistance, the (Nonprofit Entity) has agreed to create (XX) full-time equivalent positions to be made available for low and moderate-income persons and comply with the income documentation requirements specified by the MDOC. A full-time equivalent employee is an individual who is employed for 40 hours a week or a combination of individuals whose combined hours of employment equal 40 per week.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, the parties agree as follows:

1. AMOUNT OF ASSISTANCE

The County/City/Town agrees under the terms and conditions of this Agreement, to provide funds as a grant for working capital to (Nonprofit Entity) in the principal amount of \$_____.

2. REQUEST FOR FUNDS

(Nonprofit Entity) will submit to the County/City/Town written requests for funds periodically as needed for the purposes of the assistance specified herein. With each of these requests (Nonprofit Entity) will provide a quarterly financial report showing actual and budgeted expenditures sufficient for the County/City/Town to determine the propriety of the proposed use of the funds requested and the use of matching funds.

3. CONDITIONS OF ASSISTANCE

- a. The County's / City's / Town's obligation to make the assistance provided for hereby is contingent on the County's/City's/Town's receipt of CDBG-ED funds for this purpose from the MDOC.
- b. During the entire term of the contract between the MDOC and the County / City / Town (approximately two (2) years or when the job creation specified is completed), (Nonprofit Entity) will deliver to the County/City/Town quarterly financial statements indicating budget and actual expenditures. (Nonprofit Entity) will also submit annual financial statements with full disclosure notes, which must at a minimum be reviewed by a certified public accountant. In this regard, at any time, a certified public accountant audits any of these statements, (Nonprofit Entity) will furnish the County/City/Town with a copy of all summary sheets and written opinions and reports of the certified public accountant. Further, (Nonprofit Entity) will make its records relating to this Agreement available for inspection during normal business hours to the County/City/Town and MDOC.
- c. (Nonprofit Entity) will submit status reports on project performance at the request of the County/City/Town. (Nonprofit Entity) will submit the following to the County/City/Town:
 - 1) Annual business plan reports describing (Nonprofit Entity's) progress toward achieving the objectives of and implementing the strategies contained in the County's/City's/Town's CDBG-ED application.
 - 2) A progress report with each request for funds.
- d. Upon receipt of reasonable advance notice, (Nonprofit Entity) will permit representatives of the County/City/Town and DOC to inspect (Nonprofit Entity's) facilities and records that are the subject of this assistance.
- e. That (Nonprofit Entity) will file annual employment reports with the County/ City/Town and the MDOC showing the degree to which (Nonprofit Entity) has complied with the hiring commitments established hereby. The conditions contained in this section apply until the MDOC approves the Grantees Conditional or Final Certification of Completion upon project closeout.
- f. This Agreement is non-assignable except upon the written consent of the County/City/Town. A request for consent to assignment must include a statement justifying the request and the certified financial statement of the proposed assignee. This statement must be current to within ninety (90) days of the request. The County/City/Town reserves the right to deny requests for

assignment and to modify rates and terms of the Assistance Agreement and its exhibits as conditions of an assignment with MDOC approval.

- g. It is expressly understood that the proceeds of this assistance are designated solely for the purpose of legitimate working capital.
- h. (Nonprofit Entity) waives any and all claims and recourse against the County/City/Town, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to this Agreement. Further, (Nonprofit Entity) will indemnify, hold harmless, and defend the County/City/Town against any and all claims, demands, damages, costs, expenses or liability arising out of the performance of (Nonprofit Entity).

5. SECURITY

- a. As security for the performance of this Agreement, (Nonprofit Entity) will guarantee to the County/City/Town that in the event that (Nonprofit Entity) does not make jobs available to low and moderate-income persons and cooperate in the documentation of job creation and income verification that the full amount of assistance provided under this agreement will be paid back to the County/City/Town.

6. EVENTS OF DEFAULT

If any of the following events occur, the County/City/Town may, in its sole discretion, declare such event a default under this Agreement.

- a. Any representation or warranty made by (Nonprofit Entity) in this Agreement or in any request or certificate or other information furnished to the County/City/Town hereunder proves to have been incorrect in any material respect;
- b. (Nonprofit Entity) fails in any material respect to carry out its obligations under its proposal to the County/City/Town for the assistance provided hereunder.

In the event (Nonprofit Entity) fails to perform any of the covenants on its part or any event of default occurs as stated above, the County/City/Town may declare (Nonprofit Entity) to be in default and thereafter give (Nonprofit Entity) written notice setting forth the action or inaction which constitutes the default and giving (Nonprofit Entity) 45 days in which to correct the default. If (Nonprofit Entity) fails to correct the default within days of receipt of this notice, the County/City/Town may notify (Nonprofit Entity) in writing that the full balance upon this Agreement is then due and payable within 45 days.

It is agreed by the parties hereto that the provisions of this Agreement provide for reasonable and sufficient notice to be given to (Nonprofit Entity) in case of (Nonprofit Entity) failure to perform any of its covenants and that this notice is sufficient for (Nonprofit Entity) to rectify its actions or inactions of default.

Any waiver by the County/City/Town of any default by (Nonprofit Entity) does not constitute a waiver of a continuing breach or a waiver of a subsequent breach. Any agreement contrary to this Agreement is not binding upon each party hereto unless it is in writing and signed by both parties.

7. NON-DISCRIMINATION

- a. Civil Rights Act of 1964. (Nonprofit Entity) will abide by the provisions of Title VI of the Civil Rights Act of 1964 which states that no person may, on the grounds of race, color, national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- b. Section 109 of the Housing and Community Development Act of 1974. In the performance of this contract (Nonprofit Entity) will obey this provision which states that; "No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1974 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity."

8. FEDERAL LABOR STANDARDS

(Nonprofit Entity) agrees to not enter into any construction contract(s) in excess of \$2,000 that will be funded in whole or in part with proceeds from this assistance.

9. ADDITIONAL ASSURANCES

(Nonprofit Entity) will remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties with written approval of the County/City/Town for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement. (Nonprofit Entity) will comply with all applicable laws rules and regulations of the County/City/Town, the State of Montana, and the United States Government and will all lawful requirements of the County/City/Town so as to insure that this Agreement is carried out in accordance with the obligations and responsibilities of the County/City/Town to the State of Montana.

10. LITIGATION

(Nonprofit Entity) states that to the best of its knowledge and belief there are no suits or proceedings pending or threatened against or affecting it which, if adversely determine, would have a material adverse effect on its financial condition. In addition, to the knowledge of (Nonprofit Entity), there are no proceedings by or before governmental commission, board, bureau or other administrative agency pending or, threatened against (Nonprofit Entity).

11. DISPUTES

In the event that either party incurs legal expenses to enforce the terms and conditions of this Agreement, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

12. AVOIDANCE OF CONFLICT OF INTEREST

(Nonprofit Entity) covenants that no officer, member, agent, or employee of the County/City/Town who participates in the administration of this Agreement in other than a purely ministerial capacity will have any personal interest, real or apparent, in the proceeds of the assistance provided hereby. For purposes of this covenant an impermissible conflict of interest exists if the officer, member, agent, or employee; any member of his or her immediate family; his or her partner; or an organization which employs, or is about to employ, any of the foregoing has a financial or other interest in the proceeds hereof during his or her tenure or for one (1) year thereafter. (Nonprofit Entity) shall incorporate, or cause to be incorporated, in all contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

13. CONSTRUCTION AND VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the _____ Judicial District in and for the County/City/Town of _____, State of Montana.

(Name of Nonprofit Entity)

(President, etc.)

(Name of County / City / Town)

(Chief Elected Official)

ATTEST:

Legal Review